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10 December 1981

25X1 MEMORANDUM FOR: [REDACTED]
Chief, Military Personnel Branch

25X1 FROM : [REDACTED]
Chief, Policy and Programs Staff/OP

SUBJECT : Clarification of [REDACTED], Paragraph 5

REFERENCE : Your Memorandum, Same Subject, About 30 September 1981

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Henry:

1. In response to the questions you raised in your memorandum, and in connection with our later discussions, I offer the following:

a. The "short period of active duty" is not defined in specific terms. In talking with our contacts in OPM, and among ourselves, we conclude that it is one of those terms that should not be so specifically defined that there is no room for managerial discretion. Thus, we would say that a week or two, depending on the circumstances, is the most workable definition.

b. The answer to your question about "a member holding a Federal job" receiving "compensation (monies and/or benefits) from both his full time Agency position and for reserve training beyond the fifteen day limit" is "yes, but...". Our research, and our discussions, reveal that the reservist may receive pay from both organizations for 15 calendar days active duty in a fiscal year (law was changed from calendar year, HHB has not caught up yet), plus any days not used from the previous year for a maximum of 30 days. Following exhaustion of accrued military leave, the employee may be granted annual leave (if available). Having exhausted the annual leave, or whatever period approved by the supervisor, the employee then must either return to duty, or go on military separation, ^{or} LWOP.

2. In the case you described, it appears that the reservist was being paid by both the military and the Agency for a period beyond the 15 days as though in an Agency duty status. It is clear from our research that he should have been placed in an annual leave status until the period of his unpaid service with the military began. There is documentation (copy of

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excerpt from the Civilian Personnel Law Manual attached) which indicates that active military service is incompatible with civilian government service and that pay by the military is required. Thus, if the reservist does not use annual leave for the period beyond the 15 (and/or excess from previous year) days, it is my conclusion that he must be placed into LWOP status and repay the Agency. A complicating factor is that LWOP normally is not granted for purposes for which annual leave is available.

3. To summarize all the foregoing, I see the following:

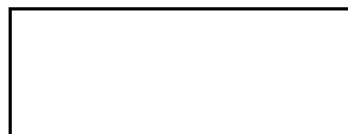
a. Pay from both the Agency and the military for the period of military leave to which he is entitled. *15 Authorized & Approved*

b. Assuming it is only 15 days since I understand this individual takes his military leave each year, the days in Agency pay status beyond the military leave time should be charged to annual leave.

c. The time now being spent with the military service in a non-reimbursable status (no pay from the military), but on Agency salary should be documented formally as a detail.

d. If there is some unusual, highly sensitive, operational reason why the individual cannot be documented formally as a detail so that his continued receipt of his Agency salary while on active duty status with the military in a non-pay status is legitimate then further discussion and perhaps a review by OGC would be necessary. It appears to me that you-all could ask your military contacts, without divulging any names, locations, or what have you, how they manage to obtain the services of government employees for free without formal detail arrangements.

5. We are unable to answer your question concerning receipt of points equal to "monies" at age 60 during the hours of a normal work day as we are unable to find any reference specifically on this subject. It is possible that the rule I cited earlier about incompatible jobs could be interpreted to cover the situation, but we suggest that your own military reserve contacts might be able to help here. If not, I see no recourse but for you to go to OGC.



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Concurrent military and civilian service

Incompatibility

A person who holds two incompatible offices is entitled to receive the salary of only one. It has been held that military service is incompatible with Federal civilian service. 18 Comp. Gen. 213 (1938) and 33 id. 368 (1954). There is no right to receive the compensation of a civilian position rather than military pay where a person is employed in a civilian office or position and also in active military service of the United States during the same period of time, as the obligation under the military service is paramount. 37 Comp. Gen. 255 (1957).

Members of the Reserves and National Guard

See 5 U.S.C. §§ 502, 2105(d), and 5534 which permit membership in a reserve component of the armed forces or in the National Guard concurrent with the holding of a civilian office.

Extra pay for details prohibited

Under 5 U.S.C. § 5534(a), an officer performing the duties of another office during a vacancy, as authorized by 5 U.S.C. §§ 3345, 3346, or 3347, is not by reason thereof entitled to any other compensation than that attached to his proper office. When through an administrative error a qualified employee is not paid the lawful salary attached to his position, retroactive correction of salary may be made. 30 Comp. Gen. 94 (1950).

Employment of aliens

Citizenship requirements

A Peruvian national who resigned from a position with the Social Security Administration in San Francisco, California, on March 31, 1959, after she learned that she was not a United States citizen, may be paid her final salary and lump-sum leave payment and need not refund any prior salary payments, if a determination is made that Peru is country allied with the United States in current defense effort. An employee as a Peruvian national is exempt from prohibition in

from earlier Per Law manual 17 GAO
1980

25X1 MEMORANDUM FOR: [REDACTED]
Chief, Policy & Programs Staff

25X1 FROM : [REDACTED]
Chief, Military Personnel Branch

25X1 SUBJECT : Clarification of [REDACTED] paragraph 5

(30 Sep 81)?

1. Title 5, Section 5533 of US Code, provides that a federal employee shall not be entitled to receive pay from more than one position for more than an aggregate of 40 hours of work in any one week. Section 5534, provides that a reserve of the Armed Forces or members of the National Guard may accept a civilian office or position and is entitled to receive the pay of that office or position in addition to pay and allowances as a reserve or member of the National Guard.

2. Title 5, Section 6323 of US Code, provides that an employee is entitled to leave without loss in pay, time or performance or efficiency rating for each day, not in excess of 15 days in a ^{civilian?} calendar year, in which he is on active duty.
Fiscal

25X1 3. [REDACTED] paragraph 5, provides that an employee may be granted military leave with pay for active duty or training, however, it will not exceed 15 calendar days. Those employee members of the reserve components who are called for a period of training or for a short period of active duty beyond the fifteen days chargeable to military leave may use annual leave and may receive compensation concurrently with pay and allowances for training or active duty beyond such fifteen day period.

4. An individual in SOG is currently serving an extended active duty tour with the reserves. In checking out the legality of an extended tour of duty in the reserves and receiving pay from both positions, MPB is of the opinion that subject can receive both salaries. However, he should have been placed on military leave and on annual leave for the time beyond the fifteen calendar days. Contact with payroll indicates that member has not been placed on military leave or annual leave beyond the fifteen day limit. Request a determination be made on the following:

a. what constitutes a short period of active duty eluded to in [REDACTED], paragraph 5d.

b. can a member holding a federal job receive compensation (monies and or benefits) from both his full time Agency position and for reserve training beyond the fifteen day limit.

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c. can a member receive monies and/or compensation in the form of points, which equate to monies at age 60, during the hours of a normal work day.

6. We shall be glad to discuss any questions or comments you may have concerning this matter.



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